IN THE

Supreme Court of the United States

NO. 539 OCTOBER TERM, 1963

ANDRES LUCAS AND ARCHIE L. LISCO,

Appellants

vs.

THE FORTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF COLORADO, JOHN LOVE, AS GOVERNOR OF THE STATE OF COLORADO, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

RESPONSE OF APPELLEES TO BRIEF OF AMICUS CURIAE

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CITATIONS

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INTRODUCTION

All of the Appellees (Defendants and Intervenors below) join in this response to the Brief of the Solicitor General as Amicus Curiae.

At the outset we wish to acknowledge the sincere effort of the Solicitor General on behalf of the Government toward a statesmanlike approach to the difficult problems here involved. The Amicus brief obviously strives to meet the responsibility of the Government as Amicus Curiae to present its view of the case. In this spirit the

Brief of the Solicitor General has stated with commendable fairness some of the principles which should govern. We must firmly disagree, however, with its application of these principles to this case and particularly with its failure to penetrate to the core of the case. While recognizing that this case is unique in its concern with the initiative and a vote of the people (as well as other factors), the brief of the Amicus, like that of the Appellants, fails to grasp the absolutely determinative nature of this factor.[1]

SUMMARY OF ARGUMENT

I

Acknowledging the Government's fair enunciation of many applicable principles, it is not chauvinism to assert their misapplication to the Colorado plan. The evaluation of this case requires more knowledge of and a deeper penetration into the diverse character of Colorado and the diverse personal concerns which require a voice in the state's legislature.

II

The issue is only the apportionment of the state senate. The lower house is strictly apportioned on population. In apportioning the senate many factors were considered. The Government admits that this is not a "crazy quilt" apportionment and that there is a uniqueness which bespeaks special consideration.

The Government, recognizing the ready availibility of initiative, in effect invites dismissal of this appeal on account of this clearly adequate remedy. We could not agree more completely. Despite this clear avenue for avoiding the constitutional issue, the Government then inconsistently attempts to upset the Colorado plan as a violation of the Equal Protection Clause.

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[1]See below pp. 24-27.

III

Acknowledging that there are permissible objectives for deviation from strict population apportionment of one house of a bicameral legislature, the Government enunciates standards which, we submit, sustain the Colorado plan. The nub of the Government's conclusion that the Colorado plan should be struck down is a mere quibble.

The Government looks upon the Colorado plan as a balancing of the economic interests of mining, livestock, agriculture and natural resources against urban people. We agree that interests, as such, should not be balanced against people and we agree with the Government's assertion that "a legislature must be made up of representatives of men and women, not of water."

It is the people concerned in these economic spheres who are represented. The well being of these people depends upon the resolution of many legislative matters; questions for instance relating to water, grazing lands, the branding of cattle, highway taxes, the control of grasshoppers and wind damage, drought relief, county revenues to compensate for the tax exemption of public lands, recreational facilities and tourism, state parks and wild life management.

These questions are real ones and their resolution affects people. Legislation concerning them requires knowledgeable lawmakers versed in the problems of their constituents and able to give them meaningful representation.

IV

The Government in advocating the rejection of the Colorado plan has, in important areas, either made baseless, erroneous assumptions or has misapprehended the facts.

First, there is the assertion that an objective of the Colorado plan is "to weight representation in favor of

rural areas." This was not an objective of the plan. The objective was to grant meaningful representation to the people in the diverse areas of concern by apportioning the senate with that permissible objective in mind. Secondly, the Government asserts that an invidious consideration behind the Colorado plan was "the evident political purpose of preserving all of the seats of incumbent senators." That this is clearly erroneous is demonstrated by the fact that the plan was initiated by the people, not by the legislature, and that it will in fact cause a number of members of both houses of both parties to lose their seats.

Finally, the Government attempts to belittle the importance of distance, climate and topography by the purely gratuitous assumption of the availability of improved transportation facilities and mass communication media which simply are not available.

V.

The Government admits that its condemnation of the Colorado plan is a matter of degree. Its condemnation is based solely upon an irrelevant play on numbers as to the Colorado senate—admitting the propriety of the house apportionment.

The assertion of the Government that a 33.2% minority can impose its will in the senate requires such a coincidence of improbables that it is without real foundation. In playing the "numbers game" in another instance, the government asserts that "75 percent of the voters, living in the eastern slope region [has] less than half the *per capita* representation in the Colorado senate [as] . . . 25 percent of the voters living in other regions." This implies that 25% has a virtual veto. This is clearly and demonstrably wrong because the Eastern Slope has 69% of the members of the house and 59% of the senators.

The implication of bloc voting inherent in both assertions totally ignores the realities of the legislative process,

where there is accommodation and balancing, avoidance of extremes and compromise.

After a discussion of what it considers irrational disparities in the Colorado plan, the Government proposes one which it claims would be permissible. This proposal is a real revelation. It involves only the shifting of two senators and the merging of those senators' prior districts with other districts. The shifting raises difficulties of access and would mean representation by one senator of people with divergent economic interests. The real significance of this plan is its assumption that a shift of two out of 104 members of the Colorado General Assembly would render an unconstitutional plan constitutional. It calls for the application of the old maxim, *de minimis non curat lex.*

VI

Finally, we come to the heart of this case—the integrity of the vote. The Government has become so preoccupied with the mechanics of apportionment that it would have this Court violate that integrity by overturning a majority vote of the Colorado electorate, both at large and in each county, adopting the Colorado plan of apportionment. The Government's rationalization for advancing this suggestion is that the significance of the popular vote was ". . . clouded by cross-currents stirred by other consequences of the particular measure upon which the vote was held." (Br. p. 15) Is the will of the voters so lightly to be frustrated?

Whoever would invite such intervention, to reverse the voters' choice, strikes at the very heart and core of representative government. Such an invitation would apply just as logically to any election where it could be claimed that the issue was clouded by "cross-currents". These "cross-currents", or imponderables always obtain—they are mutable, but the choice of the people in fair elections must be immutable.

ARGUMENT

I. THE COLORADO CASE IS UNIQUE.

In our principal briefs we demonstrated the factual uniqueness of the Colorado plan of apportionment, not only from the other state legislative reapportionment cases argued this term but from any other case or factual situation of which we have knowledge. Not only does the Colorado reapportionment have a reasonable and rational basis, but it was adopted overwhelmingly by the citizens of Colorado in the 1962 election, carried every county of the state and can be readily changed by the voters whenever they choose. The Government acknowledges this uniqueness in its brief:

> "The instant case . . . presents a unique circumstance, not found in any other case coming to our attention, which argues more strongly for invoking the doctrine that equity may stay its hand when the public interest requires, leaving the complainants to any other available remedies." (Br. pp. 24-25)

> "In the present case, . . . appellees are able to make a unique plea for withholding equitable intervention." (Br. p. 16)

II. THE PRINCIPLES OF EQUITY ENUNCIATED BY THE GOVERNMENT DEMONSTRATE THAT THE FEDERAL COURTS SHOULD NOT INTERVENE IN THIS CASE.

The Amicus brief begins (Br. p. 22) with a discussion of equitable principles which is very similar to that contained in the principal briefs of Appellees. The Government recognizes the discretionary nature of the relief sought here. It notes that (1) the Colorado apportionment is a current one "adopted after prolonged consideration" (Br. p. 25); (2) it "is not a case in which the problems of fair representation have been neglected or the channels for expressing the popular will have been closed"

(Br. p. 25); (3) the Colorado plan was "favored by the voters of every geographical unit, including those alleged to be the victims of unconstitutional discrimination" (Br. p. 27); (4) in Colorado the "avenue [of initiative and referendum] for expressing the majority's will seems readily available both in theory and through familiar use" (Br. p. 30); (5) the lower house is apportioned on a strictly per capita basis of population (Br. p. 38); and (6) "the question is admittedly close." (Br. p. 58) The Government also declines to argue, as Appellants do, that strict *per capita* representation is required.[2] (Br. p. 32)

Yet, after conceding all of the foregoing and stating that if the Colorado plan meets the standards set forth by the Government in the other five reapportionment cases "the Court might wish to dismiss . . . [Appellants'] challenge without deciding its merits" (Br. p. 17), the Government does an about face. It attempts to find a "gross discrimination" by the application of purely arithmetical ratios and percentages having no meaningful relationship either to real people and their welfare and aspirations or to real legislative problems or procedures. It plays a "numbers game." It forgets the equities, available remedies, and vote of the people previously noted, and in a complete *non sequitur* based only on arithmetic asks the Court to reverse the lower court.

Looking at the opposing briefs as a whole, it is apparent (1) that only Appellants urge a need for judicial resolution of the problems of Colorado apportionment, and (2) the Government itself would be content to have this appeal dismissed. With the latter we agree. The case

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[2]It should be noted that even Appellants, who are arguing for strict *per capita* representation, admit in footnotes in their proposed plan (Br. Appendix C) that this is virtually impossible in Colorado. Thus, they say: ". . . it is almost impossible to make all districts precisely equal . . . ." (p. 93) "There is no other existing district with which it appears geographically possible to combine Boulder." (p. 93) "Thus some judgment must be exercised . . . ." (p. 94) ". . . resolution of the fractional factor in favor of an additional member for this County would appear justified." (p. 95)

should be dismissed under the established and sound principle that a court of equity should not intervene and that it should withhold the exercise of its powers when a better remedy exists for the problem at hand.

The case arose out of an attack upon the decision by vote of the people of Colorado, fully informed and faced with clear alternatives. If time proves that decision to be wrong, or if time alters the facts so as to outmode that decision, the people of Colorado should be the ones to change it, and they have at hand the readily available means of doing so. In Colorado, the people and not the legislature have true ultimate sovereignty and only they can amend the Colorado Constitution. (There is no provision in Colorado for amendment of the Constitution by the legislature—only by the people, by vote on a measure either initiated by the people or referred to them by the legislature. (Colo. Const., Art. XIX)) To do as the Government suggests and judicially determine the Colorado plan invalid, suggesting some other alternative, would have the ultimate, if not technical effect, of a mandamus to the people of Colorado to change their plan of representative government. This plan was adopted by a recent popular vote and can at any time hereafter be changed to conform to the voters' needs and desires, should those needs and desires change. This is no place for a court of equity to be exercising its functions.

III. AN APPLICATION OF EVEN THE PRINCIPLES ACCEPTED BY THE GOVERNMENT DEMONSTRATES THE VALIDITY OF THE COLORADO PLAN.

While the broad principles of equal protection have developed through years of judicial interpretation, the application of these principles to legislative reapportionment is new. With no specific guiding case law to follow, we are, in all sincerity, generally content with the *ex cathedra* enunciation by the Solicitor General of the standards

by which a legislative reapportionment is to be judged. These standards are delineated in the Amicus brief as follows:

> "... [W]e turn to the justifications assigned that are permissible in kind because their function is to make representative government work better, in the sense of making the legislature better informed, enabling the representatives to be more familiar with their districts and more accessible to their constituents, preserving a measure of stability, or promoting effective political organization, all as distinguished from the mere creation of favored classes of voters with preferred political rights." (Br. p. 46)

The Government then enumerates specific "permissible objectives" which give "some support to a departure from strict *per capita* representation in Colorado . . . ." (Br. p. 47) They are: (1) "the desire to keep the Senate small enough in numbers to be a truly deliberative body"; (2) "making the Senate districts small enough in area to enable each senator to have first-hand knowledge of his entire district and to maintain close contact with his constituents", particularly in "a mountainous area" like Colorado where "accessibility is affected by the configuration as well as the compactness of a district"; (3) "to avoid breaking up any county in order to combine part with another county in forming a multi-county district"; (4) recognizing the importance of "county political organizations [which] doubtless contribute both to a senator's knowledge of the needs and desires of his district and also to the operation of the electoral process as a means of reflecting the will of the electorate"; (5) "to assure some representation of special localities whose needs and problems might pass unnoticed if the districts were drawn solely to achieve *per capita* equality"; (6) "to avoid district lines that might submerge the needs and wishes of portions of the electorate by regularly grouping them in districts where they will be outnumbered by voters with wholly different

interests"; (7) "[s]ince districting is a method of giving a voice to putative minorities, community of interest would seem to be a relevant factor in drawing district lines." (Br. pp. 46-47)

The Government also agrees that the Colorado plan, when measured against the proposition that discrimination in *per capita* representation must have "a rational basis in objectives relevant to the electoral process", (1) is not a "crazy quilt" without rhyme or reason, and (2) cannot be condemned for failure to have permissible objectives to justify it. (Br. pp. 35-38)

The Government position, in the light of the above concessions, then boils down to the extent or degree of deviation from *per capita* representation that may be justified by Colorado's permissible objectives. Even on this matter of degree, however, the Government states:

> "We recognize that it is not for the courts to choose one apportionment as preferable to another because it provides greater *per capita* equality or because it approaches closer to some other ideal." (Br. p. 50)

As we will show, the Government errs in its subsequent analysis of the Colorado plan, first by erroneously ascribing nonexistent motives and purposes to the Colorado plan and, second, by placing slavish reliance on numbers, ratios and percentages, which though they be arithmetically correct are meaningless in the context of true representative government in Colorado. A real analysis of the Colorado plan makes it apparent that, despite arithmetical variations, Colorado's districting is sound and reasonable. Thus, James Grafton Rogers said in his testimony:

> "The distribution of the Senate under Amendment No. 7 appears to me to be the product of a complex of historical, economic, social, and not many political,

elements, but it is a complex of them all. Certainly, it does not represent a distribution of the Senate on the basis of an International Business Machine product." (App. p. 109)

Similarly, what separates the permissible from impermissible considerations in view of the Solicitor General devolves to a quibble in semantics. Thus, the Government first challenges the concept of representation of economic interests. It states:

> "[I]t is not the function of an apportionment to balance off the economic interests of the several regions in a State by assigning them purely arbitrary weight in the legislature disproportionate to the numbers of people affected. The mining, livestock, and agricultural interests are not entitled to extra votes merely because the urban majority would otherwise dominate the legislature. Nor is it permissible to assign extra voting power to those who command natural resources; *a legislature must be made up of representatives of men and women, not of water.*" (Emphasis supplied) (Br. p. 45)

We agree. Legislators represent people, not faceless numbers drawn from a census; they represent people, not per capita statistics; they represent people with interests, problems, homes and aspirations; people with jobs (or unemployed if jobs are lacking); people who need education and roads; people whose livelihood in mining areas depends on minerals and mines; people whose very life in arid Colorado depends on water;[3] people who pay for their government by taxes and who differ as to what kind

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[3] "Here is a land where life is written in water . . ."

These are the first words of an inscription underlying the murals in the rotunda of the Colorado State Capitol Building. "The use, control, and development of our streams is of ever-present importance to Colorado. Water is the basis, the measure, and the limit of our economy, our growth, and our general welfare." Breitenstein, "Some Elements of Colorado Water Law," 22 ROCKY MTN. L. REV. 343, 355 (June 1950)

of taxes they want. It is absurd to say that a Colorado State Senator should not represent water. Of course he should not. But the welfare of all of the people in arid Colorado depends on water, and that of some depends on mining, livestock or agriculture, just as that of others is dependent on the manufacture or sale of machinery and of others on the practice of law or medicine.

In Colorado, some of these people are in the minority. There can be economic minorities, as there are other minorities, and they too are entitled to some representation. The well-being of these people, whether minority or majority, depends in part on the intelligent resolution of specific legislative problems. These would include:

(1) How may water be diverted from its streambed, appropriated to beneficial use and such diversion and appropriation recorded and proved? How can a water conservancy district be established? What provisions of a proposed interstate river water compact are consonant with the needs of Colorado citizens living in the river's drainage area or other drainage areas to which its water could be diverted? What compensatory water storage should be made available to those living in one river basin when water is diverted to another? How can cities, towns and factories be prevented from polluting the state's natural rivers? What standards will govern the development, priority and use of underground water non-tributary to any stream?

(2) What rental should be charged for leases of state and school lands for grazing purposes? What effect on cattle rustling would result from laws prohibiting the branding of cattle by hot irons? What is a fair tax assessment per head of cattle or sheep?

(3) What highway tax should apply to trucks carrying farm produce? What grasshopper and wind damage control measures are necessary? What should be the re-

quirements for grading and candling eggs in Colorado? Is drought relief necessary for a given area?

(4) Because of the high percentage of public lands and the resulting low tax base in the Western Region, what can be done to pay for the costs of its county governments? How to encourage fishermen, skiers, mountain climbers, wilderness outfitters and ordinary tourists and promote the recreational values of this "last frontier" and still retain its wilderness qualities. Should more funds be devoted to developing state parks? Can farmer demands for predator control be reconciled with proper wild life management?

These questions are not hypothetical, as is shown by the nature of typical matters passed upon by the Colorado legislature in its last general session.[4] They are real and their resolution affects the lives of people. Moreover, their meaningful resolution by the Colorado legislature requires

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[4] In 1963 the General Assembly passed some 321 bills. They related to numerous subjects, including the following:

Water (4 bills, relating to the Costilla Creek Compact between Colorado and New Mexico, repeal of provisions for public irrigation districts, and appropriations for snow studies and studies of the outlet works of the Reudi Dam);

Cattle and Agriculture (15 bills, relating to publication of registered brands and lists of estrays, the authority of brand inspectors to ride the ranges to protect against theft, brand inspections of cattle purchased by meat packers, predatory animal control programs, and inspection and control of parasites of honey bees);

Fish, Game and Recreation (17 bills, relating to appropriation of waters for the preservation of fish life, the tagging of big game, classification of fur bearing animals, disposition of funds from the sale of beaver pelts taken by state employees, regulation of the possession and sale of raptores, and appropriations for fish hatcheries);

Local Government (36 bills, 11 relating to cities and towns, 6 to counties, and 19 to special improvement districts, which provide services of an urban nature (water, sewers, parks, etc.) to unincorporated areas). These bills related to reimbursement of counties for certain welfare expenditures, additional authority relating to county airports, refunding of bonded debts of cities and towns, authority for weed and rubbish removal by cities and towns, temporary assignment of policemen or firemen from one jurisdiction to another in emergencies, and annexation of territory by municipalities (which was vetoed by the Governor).

knowledgeable lawmakers, versed in the needs and problems of their constituents and able to propose, draft and intelligently consider legislation in areas that would otherwise "pass unnoticed" were their particular constituents not so represented.

Therefore, regardless of characterizations such as "mining interests" or "water interests", what we are talking about, as were the witnesses below, and what the Colorado plan is all about is people; people, not arbitrarily favored or discriminated against, but people with dissimilar and sometimes conflicting needs and problems.

IV. OTHER ASSUMPTIONS MADE BY THE GOVERNMENT HAVE NO BASIS IN FACT.

As we have shown above, the charged "invidious consideration" of representing economic "interests" asserted by the Government against the Colorado plan does not bear up under analysis. Similar assertions without factual basis have been made by the Government. We turn to them briefly.

First, the Government asserts that an objective of the Colorado plan is "to weight representation in favor of rural areas . . . ." (Br. p. 52) The import of this assertion is that the rural districts were deliberately accorded more representatives than their population alone would entitle them to simply bcause they were rural. This is not so. We do not and could not assert an inherent superiority of farmers versus city dwellers, of irrigators versus dry-land farmers or of rural versus urban dwellers. But we do insist that in a bicameral legislature, where one house is apportioned strictly in accordance with population, the other house can provide for the representation of people with interests as closely in common with each other as is possible. Thus their interests will not be submerged by the representatives of people whose interests vary from theirs or are antagonistic. We do assert the right of the people in apportion-

ing their legislature to recognize factors essential to their welfare. Even so, in the Colorado Senate 24 senators out of 39 are to be elected from predominantly urban districts. (Br. of Defendant-Appellees, p. 40)

Second, the Government asserts that an "invidious consideration" behind the Colorado plan was "the evident political purpose of preserving all of the seats of incumbent senators." (Br. pp. 51-52) This surmise is apparently based upon the fact that the Colorado senatorial district lines run primarily along previously existing district lines. That there is nothing "invidious" about this particular fact is evident from the following: (1) The most natural and logical way to draw district lines is in accordance with those in existence which, with minor exceptions, were those adopted in 1932 on the initiative of the Colorado voters. This accords with the experience of Colorado voters, both as to reasonable boundaries and voting habits. (2) The Colorado plan, by apportioning the House of Representatives on a strict population basis, obviously will cause a number of representatives of both parties to lose their seats. This will result not only from the subdistricting of the more populous counties, but also from the redesignation of the boundaries of multi-county districts. The exact effect of this redistricting of the house strictly in accordance with population could not, of course, be foretold, but it would necessarily result in the loss of many seats by incumbents.[5] (3) The Colorado plan, by providing for subdistricting of

[5]Under the Colorado plan, as implemented by House Bill 65, ten incumbents will no longer serve in the House of Representatives because their legislative districts have been combined with other districts. Certain of the less populous counties formerly allocated a total of nineteen representatives now are allocated only nine representatives. (Of the nineteen incumbents, twelve are Republicans and seven are Democrats.)

In addition, in larger counties which have more than one representative district, the district boundaries established by House Bill 65 result in nine incumbents facing the loss of their seats to other incumbents, simply because they live in common districts. As of the time of approval of House Bill 65, twelve incumbents in Denver were living in five districts and two in Mesa County were living in the same district, as were two in Pueblo. Of these sixteen incumbents, living in seven districts, seven were Republican and nine were Democratic. (Source: Legislative Reference Office)

the more populous senate districts, threatened the seat of every senator from a multi-senator district.[6] (4) Finally, the Colorado legislature and its senators did not propose the Colorado plan. The Intervenors did, and it was adopted by the voters of Colorado.[7]

From the foregoing, it is apparent that the alleged "invidious considerations" which the Government asserts lay behind the Colorado apportionment have no basis in fact.

Finally, the Government attempts to shrug off the importance of distances, climate and topography by gratuitously assuming the availability of improved transpor-

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[6]In the Senate, seven incumbents live in three districts, as boundaries were established in House Bill 65. Of those, five are in Denver and two are in Pueblo. Three of the incumbents, all from Denver, are Republicans, four are Democrats. Four will be unable to be reelected unless they or their opponents move. (Source: Legislative Reference Office)

[7]We would like to put at rest once and for all the implication in both the Appellants' and the Government's briefs that the Colorado plan (Amendment No. 7) was "politically motivated." Neither the Democratic nor the Republican State Platforms in 1962 took any position with respect to the two reapportionment plans. In fact, the Democratic platform did not even mention the subject. The Republican platform said only:

> "Recognizing the transcendent importance of reapportionment under direct mandate of the people, we pledge ourselves to make reapportionment the first order of business in keeping with the constitutional requirement."

The 1960 Democratic platform contained an interesting, short reference to apportionment:

> "The 1960 Federal census having been completed we urge the prompt and effective reapportionment of legislative seats as provided by the constitution in order to insure that all sections of the state are properly represented."

And, in 1958:

> "We reaffirm our support of continuing efforts to apportion the Colorado General Assembly to assure people of all areas and interests of their voice in legislative halls.
>
> "We urge a bi-partisan legislative study of the problem, or the reactivation of the Governor's Commission on Legislative Apportionment, in order that a solution be found that is equitable to the city and rural dweller alike."

These platforms are significant documents. Although they are not public records, Section 49-4-25, Colorado Revised Statutes 1953 provided for the formulation of the state platforms of the respective parties on the fourth Tuesday of September in election years. The statute also required that the platforms be made public not later than five days after the date of such meeting. (See **The Denver Post**, Oct. 7, 1962, p. 6D.)

tation facilities and of mass communication media.[8] In the winter, no road in Colorado is dependable. Loveland Pass, the most heavily traveled pass in Colorado (Exhibit D., Part II, p. 62), is often closed by avalanches and blizzards. The same is true of Berthoud, Monarch and La Veta Passes, the major arterial highways over the Continental Divide. Many "highways" that are designated as "improved" on a map are neither paved nor open throughout the year. The first snow falls of winter are allowed to close them by drifts and no effort is made by the Highway Department to open them until late spring or early summer. Moreover, television and radio communication is inadequate, and even nonexistent, in many parts of the western half of the state. The resort town of Aspen, for example, catering to its modern, sophisticated clientele, did not have a radio station until February, 1964, and reception from the nearest town, Glenwood Springs, was ordinarily impossible. Even where local radio stations exist, the topography limits their effective range to approximately 15 miles. This means that a Western Slope senator cannot through one communication outlet reach all of his constituents. The situation with television broadcasting is even more restrictive. For example, in the northwest corner of the state near Meeker, the only television reception originates in Utah; in the San Luis Valley and in the southwest near Cortez and Durango the only television is that beamed from Albuquerque, New Mexico; and a resident of Jackson County and other northern Colorado areas can receive television only from Cheyenne, Wyoming. A state senator from these areas is thus already required to go to another state to appeal via television to his constituents. Any increase in the area of his district would, of course, multiply the difficulties of communication. In short, the problems of transportation and communication

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[8]This assumption is not supported by any fact appearing in the record and is contrary to the situation as it obtains in Colorado. This leaves Appellees no alternative but to rebut these unsupported assertions by themselves going beyond the record.

in Colorado simply cannot be shrugged off as no longer existing in modern times.[9]

It is apparent that the Government has taken arguments and facts from other cases and has attempted to shoehorn them into this Colorado case. Those arguments and facts simply do not fit.

V. THE NUMERICAL INEQUALITIES IN THE COLORADO SENATE ARE MEANINGLESS IN TERMS BOTH OF EQUAL PROTECTION AND THE LEGISLATIVE PROCESS.

The crux of the Government's case, by its own admission, "is inescapably . . . [a question] of degree." (Br. p. 56) Principally, the Government relies upon the mathematical statistics: (1) that a ratio of 3.6 to 1 exists between the smallest district (Las Animas County) and the largest district (El Paso County)[10] and (2) that a theoretical minority of 33.2% of the population can elect a majority of the Colorado senators. As we have demonstrated in our principal briefs, such ratios and percentages are by themselves meaningless.[11]

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[9]At another point (Br. p. 52) the Government purports to put "the problem of area in perspective" by noting that certain former senate districts covered large areas. In 1876, for example, District 13 covered 15,803 square miles, but it should also be noted that according to the 1870 census only 826 people lived in this entire area.

[10]The numbering of senatorial districts varies between Amendment 7 (the apportionment plan adopted by the voters) and the Lamb Bill (Colorado House Bill 65) which implements Amendment 7 and gives each subdistrict within a multisenator district a separate number. Thus, multisenator Denver (District 1 under Amendment 7) is broken down into districts 1 through 8 under House Bill 65.

The court below, this brief and the briefs of the United States and Appellee-Defendants refer to the districts as they are numbered under House Bill 65.

The principal brief of Appellee-Intervenors and the Denver Research Institute Report (Defendant's Exhibit D) employ the district numbers used in Amendment 7. A parallel table of the two numbering systems is appended for the convenience of the Court as Appendix A to this brief.

[11]Brief of Appellee-Defendants, pp. 35-42; Brief of Appellee-Intervenors, pp. 25-27, 34-37.

To begin with, we must not lose sight of the fact that the lower house of Colorado's bicameral legislature is apportioned strictly according to population. The Government has conceded that the net effect of such equal *per capita* representation in the house is two-fold: First, because "the inequalities in representation in the Senate are tempered by the equality in the lower branch, a consideration which has undeniable importance where the critical issue is whether the inequalities are so gross as to be arbitrary and capricious in relation to the alleged justification. Second, [because] . . . the *per capita* representation in the House will prevent a minority from imposing its will upon the majority except as it can force a compromise as the price of action." (Br. p. 41)

Even within the senate, where the alleged discrimination exists, the ratios and percentages harped upon by the Government are not relevant in terms of the legislative process and of fair representative government which, after all, are basically what this case is about. In order for the 33.2% minority to impose its will in the senate as to a given legislative issue, the following assumptions must be made: (1) The issue must be such that all of the senators residing outside the state's three metropolitan areas[12] must, disregarding party lines and other differences and conflicting representational interests dividing them, vote to a man as a bloc. (2) The issue must be such that one senator from the metropolitan areas, specifically one of the two senators from Boulder County (and from no other), will break away and vote with the non-metropolitan areas. (3) The issue must be such as to galvanize the remaining 19 senators in the metropolitan areas into a single bloc from which not one, regardless of party affiliation or any other reason, will deviate. It is wholly naive and unrealistic in terms of the legislative process to assume that such

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[12]Denver, Colorado Springs and Pueblo. Together they elect a majority (20) of the 39 senators.

an issue could arise. The percentage, therefore, upon which the Government stakes its case is meaningless.[13]

To provide another illustration of the failure of the Government to come to grips with the fundamental issue of the case (that of what constitutes fair and reasonable legislative apportionment under the Equal Protection Clause), consider the twice-repeated phrase (Br. pp. 19 and 58) that the Colorado plan gives "75 percent of the voters, living in the eastern slope region, less than half the *per capita* representation in the Colorado Senate which it grants the 25 percent of the voters living in other regions . . . ."Its implication is that these 25 percent of the voters have virtually a veto over the Colorado legislative process. Let us analyze the proposition.

The "Eastern Slope" counties as defined by Exhibit D are comprised of the three metropolitan areas of Denver (Denver, Adams, Arapahoe, Jefferson and Boulder Counties), Colorado Springs (El Paso County) and Pueblo (Pueblo County) plus the counties of Weld and Larimer. The Eastern Slope elects approximately 69% of the representatives in Colorado's lower house and 23 (59%) of Colorado's 39 senators. Even assuming that representatives

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[13]Without urging at this point the federal analogy, a comparable argument could be made that voters from states representing 17.1% of the total United States population could, by electing 51 U. S. Senators, impose their will on Congress. The 26 least populous states, with a combined population of 30,728,381 are:

Alaska	Kansas	Oklahoma
Arizona	Maine	Oregon
Arkansas	Mississippi	Rhode Island
Colorado	Montana	South Carolina
Connecticut	Nebraska	South Dakota
Delaware	Nevada	Utah
Hawaii	New Hampshire	Vermont
Idaho	New Mexico	West Virginia
	North Dakota	Wyoming

Is there any conceivable issue which could so divide the Senate that all of the senators from the 25 least populous states and one of the senators from Connecticut, the next least populous state, would vote as a bloc against all of the senators from all of the other states and against the other senator from Connecticut who would also all vote as a bloc? This type of reasoning per force lies behind attaching any real significance to the fact that a majority of the Colorado senate is elected from districts having 33.2% of the Colorado population.

of the 25% of the people living outside the Eastern Slope could unite on an issue, what more control of both houses does the Eastern Slope need? A simple majority of both houses is all that is needed to pass all legislation in Colorado. (Const., Art. V, Sec. 22) The Eastern Slope would have 3 votes more than a majority in the Senate, and 14 votes[14] more than a majority in the House.

If we exclude Weld and Larimer Counties, which although containing relatively large cities are still rural in large part, still the remainder of the Eastern Slope (the metropolitan areas of Denver, Colorado Springs and Pueblo with their suburbs) has a majority of the Senators, 20, and 42 out of 65 representatives. This is more than would be necessary to carry legislation.

We would not be so naive or unrealistic as to leave the impression that all the Eastern Slope or the metropolitan senators would unite or vote as a bloc on any really controversial issue. Their votes are also subject to cross-currents of party politics and the varying needs and interests of their local constituents. This is exactly the point. The legislative process is, per force, one of accommodation and of balancing. The legislative process is not one of headon collision. It is a process of avoiding extremes, give and take, and compromise. It is not one of mathematics.

The Court therefore should eschew this "numbers game" played first by Appellants and now by the Government, because ratios and percentages so used do not provide meaningful criteria for the ultimate decision to be made here — whether equal protection of the laws has been denied Colorado voters. The Government itself has provided an excellent example of this point. After discussing various permissible justifications for a deviation from strict representation by population, the Government asserts that

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[14]House Bill 65.

the Colorado plan may be remedied by either of two alternatives for redistricting the Colorado Senate. (Br. pp. 47-49). The first of these involves only the shifting of two senators, one to Denver and one to El Paso County, and the merging of those senators' prior districts with other districts.

In terms of apportionment, we cannot say that this first alternative for apportionment proposed by the Solicitor General is irrational. Indeed, it varies little from the Colorado plan. It does, however, raise difficulties such as the following. The proposal to add Custer and Fremont Counties to District 24 (Chaffee, Park, Gilpin, Clear Creek, Douglas and Teller Counties) would add to the transportation and fragmented population problems of a district where access and divergence of population are already a problem. (Exhibit D, Part I, pp. 24-25) It would throw Canon City with its high percentage of employment in state government (Exhibit D, Part I, p. 26) and the rest of Fremont County with its unemployed coal miners in with mountain counties having little state employment, no substantial cities, and no coal mining; in short, with wholly dissimilar characteristics. It would create a district 140 air miles long from north to south and 215 miles long by the shortest road mileage. (The roads are undependable and in some places unpaved.) It would add to the population of a district which includes Clear Creek County which is rapidly becoming part of suburban Denver.[15] (Exhibit D, Part I, pp. 24-25)

The other suggestion, to cut down the number of senators representing the South Central Region, would further

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[15] It is predicted by the Clear Creek County Area Redevelopment Administration Committee that the population of Clear Creek will increase from its 1960 level of 2,793 to from 20,000 to 30,000 in the next decade. The growth prediction primarily derives its support from the construction of Interstate Highway 70 running west from Denver.

detract from effective representation of its chronically depressed counties.[16]

Be that as it may, the absurdity of the mathematical approach to equal protection is illustrated by the fact that the Government, by shifting two out of thirty-nine senators (less than 2% of the membership of the 104 man General Assembly), purports to render valid what it previously described as a "gross malapportionment" (Br. p. 42) in violation of the Equal Protection Clause. The incongruity of the position so taken becomes apparent when the Government's first proposed plan of apportionment is subjected to the "numbers game" approach employed, by Appellants and the Government, against the Colorado plan. Under the Government plan just discussed a minority of 39% of the people[17] would elect a majority of the Colorado Senate. The ratio between the largest district under the Government plan (Jefferson County) and the smallest district (Number 34, Kit Carson, Elbert, Lincoln, Cheyenne and Kiowa) is 3 to 1 and between the largest and the next smallest district (Number 27, Delta, Gunnison and Hinsdale) 2.99 to 1. Indeed, four districts (Numbers 34, 27, 29 and 33) would have over two and one-half times the representation of Jefferson County. What possible rational basis is there for asserting that a ratio of 3.6 to 1 is "gross" and 3 to 1 is permissible, or that majority senate representa-

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[16] Figures developed by the Colorado Public Welfare Department show a state average of the percent of population receiving assistance of 5.29%. The very counties whose representation the Solicitor General would propose to cut are those which head the list, beginning with Huerfano County where 18.06% of the population receive welfare assistance. Other counties which would lose representation and their respective percentages are: Costilla, 15.37%; Las Animas, 14.09%; Conejos, 14.01%; Saguache, 13.87%; Custer, 10.12%; Rio Grande, 9.93%; Fremont, 9.49%; and Mineral, 8.64%. El Paso and Denver, on the other hand, to which the Solicitor General's proposal would give more seats, have a definitely lower percentage of population receiving state aid, namely 3.46% and 6.32%, respectively. It is submitted that the welfare problems of these chronically depressed counties are entitled to fair and adequate representation.

[17] 684,283 people from the Western Region, South Central Region and Eastern Region and from Weld, Boulder, Larimer and El Paso Counties.

tion for 33.2% of the population is invidious discrimination and for 39% is not? How can it be logically asserted that a shift of 2 out of 104 members of the Colorado General Assembly (65 of whom are elected on a strict population basis) renders an allegedly unconstitutional plan constitutional?

The second alternative suggested by the Government for reapportioning the legislature appears as Appendix B to the Amicus brief. This is a more extreme plan which also contains serious defects by creating unnatural and unreasonable districts. Rather than belabor the matter here, we have analyzed the plan and shown certain of its defects in Appendix B to this brief. We submit that in spite of its disclaimers the Government has, in suggesting the alternate plans of apportionment, lost sight of its own caveat:

> "Once the requirements of equal protection are satisfied, the choice is for the legislature [and, in Colorado, *a fortiori* for the people]." (Br. p. 50)

This brings us to the bedrock question that must be asked regarding the position of the Government here. Why, when the Government recognizes the discretionary aspects of equitable relief, when the permissible criteria for apportionment articulated by the Government go hand in glove with the objectives of the Colorado plan and when at least one of the proposed Government solutions to Colorado apportionment is so close to the Colorado plan as to render the differences *de minimis*, is the United States here seeking a reversal in this case? To us the Government's arguments do not support its conclusion.

VI. TO GIVE EFFECT TO THE GOVERNMENT'S CONTENTION WOULD MAKE THE RIGHT TO VOTE AN EMPTY GESTURE.

The core of this case is the vote of the people: (1) Their approval of the Colorado plan in 1962; (2) Their right to

initiate a change in the plan any time they wish; (3) Their right to have the integrity of their vote preserved. The Government in this case has become so engrossed in its mathematics of apportioning votes that it has lost sight of preserving the integrity of a vote cast. This case arises from a challenge to the right of a clearly identified majority—a majority of the voters in every county of the State of Colorado—to adopt a plan of apportionment of their own choosing.

The Government charges the lower court with giving "too little [weight] to the *value of the right to vote.*" (Br. p. 19. Emphasis added.) It then turns around and disdains and disregards the vote cast by the people of Colorado. It exalts the value of the right[18] and then asks the Court to render that right sterile by overturning the vote of the Colorado electorate.

The Government argues that "the significance of the vote [was] clouded by cross-currents stirred by other consequences of the particular measure upon which the vote was held." (Br. p. 15) There were obviously in the referendum other issues than just the constituency of the state senate.

(a) There was the issue of whether the state legislature should be forced to reapportion the house after every decennial census by terminating the compensation of the legislators and making them ineligible for reelection if they failed to do so.

(b) There was the issue of whether, if one house is apportioned strictly in accordance with population,

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[18] At page 56 of its brief the Government states very eloquently:

". . . [v]oting 'is regarded as a fundamental political right, because preservative of all rights.' **Yick Wo v. Hopkins**, 118 U.S. 356, 370. 'No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.' **Wesberry v. Sanders**, No. 23, this Term, decided February 17, 1964. . . ."

the apportionment of the other house may take into consideration other factors (Amendment No. 7) or must also be apportioned strictly on population (Amendment No. 8).[19]

(c) There was the issue of subdistricting of counties having more than one representative or senator.

(d) There was the issue as to whether apportionment of the house should be made by the legislature, which had failed in the past to follow the mandate of the Constitution, or should be made by a commission.

What effect any of these other issues had upon the ultimate vote is, of course, purely a matter for speculation. But is the integrity of votes cast to be attacked on the ground that there were cross-currents operating for and against the adoption of the Colorado plan?

Every election has its cross-currents and its imponderables. What would have been the results in the presidential election in 1956 had not the British and French invaded Suez and stimulated the vigorous reaction of President Eisenhower? What would have been the result in the election in 1962 had it not been for the Cuban missile crisis and President Kennedy's dramatic stand? What caused the victory of Ambassador Lodge over Senator Goldwater and Governor Rockefeller in the New Hampshire primaries this year? Should we disregard an election in New York when a blizzard ravages the upstate area, leaving voters in metropolitan New York relatively accessible to the polls? The answer, of course, is no. A vote in the United States of America is a sacred thing and its integrity must be respected.

The only purpose of the intervention of the federal courts in these apportionment cases is to protect the right to vote against invidious discrimination. But to what pur-

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[19]In the 1962 election 305,700 voted for Amendment No. 7, over twice as many as the 149,822 who voted for Amendment No. 8.

pose protect the right to vote if the vote itself is ignored? This is the core, the very heart, of the Colorado case. As the lower court succinctly put it: "The contention that the voters have discriminated against themselves appalls rather than convinces." (App. p. 254).

When anyone contends that the vote of the people should be ignored because they are ignorant, misled or confused, that person is shaking the very cornerstone of the American form of government. An election is a real, vital, tough part of the American way of life. Both sides campaign energetically and vigorously, using all media of communication. As long as the fight is fair and everyone has equal access to the polls (as in this case, where the vote was state-wide and a ballot in Durango equalled one in Denver) we must abide by the result if the guarantee of representative government is to mean a thing. In Colorado, if the loser feels aggrieved, he can try again, as Appellants can here.[20] To say, as the Government and Appellants do, that the right to vote is sacred but that the vote itself can be ignored, appalls.

[20] Appellants still have until July 2, 1964, to file an initiative petition with the Secretary of State in order to place an amendment on the ballot. (§70-1-4, Colo. Rev. Stat. 1953)

CONCLUSION

The appeal should be dismissed or, in the alternative, the judgment of the court below should be affirmed.

Respectfully submitted,

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APPENDIX A

PARALLEL TABLE OF DISTRICTS

The numbering of districts as in Amendment No. 7 is used in the principal brief of Appellee-Intervenors and in Exhibit D. The numbering of districts as in H.B. 65 (the Lamb Bill) is used in the opinion of the court below, in this brief and in the briefs of Appellee-Defendants and the United States.

Amendment No. 7	H.B. 65	Counties
1	1- 8	Denver
2	9-10	Pueblo
3	11-12	El Paso
4	23	Las Animas
5	13-14	Boulder
6	24	Chaffee Park Gilpin Clear Creek Douglas Teller
7	15-16	Weld
8	21-22	Jefferson
9	25	Fremont Custer
10	26	Larimer
11	27	Delta Gunnison Hinsdale
12	28	Logan Sedgwick Phillips
13	29	Rio Blanco Moffat Routt Jackson Grand

Amendment No. 7.	H.B. 65	Counties
14	30	Huerfano Costilla Alamosa
15	31	Saguache Mineral Rio Grande Conejos
16	32	Mesa
17	33	Montrose Ouray San Miguel Dolores
18	34	Kit Carson Cheyenne Lincoln Kiowa Elbert
19	35	San Juan Montezuma La Plata Archuleta
20	36	Yuma Washington Morgan
21	37	Garfield Summit Eagle Lake Pitkin
22	17-18	Arapahoe
23	38	Otero Crowley
24	19-20	Adams
25	39	Bent Prowers Baca

APPENDIX B

ANALYSIS OF THE ALTERNATIVE APPORTIONMENT OF THE COLORADO SENATE PROPOSED BY THE SOLICITOR GENERAL

A brief look at the alternate apportionment suggested in the Appendix B[1] to the brief of the United States points up the dangers of reapportioning a state such as Colorado with a map and a census report, at a distance of over a thousand miles. In analyzing the difficulties encountered in the Government's second proposal, we do not mean to suggest that the districts provided by the Colorado plan are perfect or that the Government's proposals are completely irrational. In a state with a topography, economy and people as diverse as Colorado's, one can only hope to achieve a reasonable balancing of conflicting goals, as the Colorado plan has done. This appendix, in pointing out the shortcomings of the Government's second proposal, is not intended to belittle the job done by the United States. It rather serves to point up how the Colorado plan has overcome as many of the obstacles as is reasonably possible in apportioning the state.

The United States admits the difficulties encountered in drawing a line between Amicus' Districts 2 and 3, when it confesses ignorance of the accessibility of Chaffee County to the rest of Amicus' District 2. While U. S. Highway 24 provides a year-round connection (over 10,424 foot Tennessee Pass) between Chaffee County in the Southeast and Garfield County in the West, it should be noted that the towns of Salida (in the southeastern part of the district)

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[1] In this analysis we will refer to the apportionment proposed in Appendix B to the brief of the United States as the Government's second proposal to distinguish it from the proposal incorporated in its brief (pp. 47-49), and to the districts suggested as "Amicus' District 1, 2, 3," etc.

and Rifle (in the western part) are 178 miles apart over U. S. 24, and that Rifle is still approximately 50 miles from the western limits of the district. A knowledge of the country would reveal that Colorado Highway 82, over Independence Pass, a shorter route by the map, is closed almost half the year. It is beset, as is Highway 24, by a most formidable range of mountains, the Sawatch, which contains more than 14 peaks over 14,000 feet in height,[2] more than are found in all of California, which has only 12.[3]

Chaffee County is far more easily accessible to Amicus' District 3, over a relatively low pass, and should be shifted to that district, as the footnote to the Covernment's second proposal nearly concedes. (Br. p. 69) This shift would be accompanied by a shift of Summit County out of Amicus' District 3 and into Amicus' District 2, which would then become identical to District 37 under the Colorado plan. Including Summit County in Amicus' District 3 makes no geographical sense because it is separated from the rest of that district by a high range of mountains constituting part of the Continental Divide (obviously placing it in a different river basin).

These shifts do not end the catalogue of difficulties in Amicus' District 3. The two southernmost counties, Fremont and Custer, have little in common with the rest of the district. The main highway through this area is U S. 50, which runs east and west between Pueblo and Gunnison, but District 5 runs north and south. Contrast the situation of these southern counties with that of Gilpin and Clear Creek Counties to the north, which are rapidly becoming more highly developed and urbanized than they have been since the early mining days. For example, Clear Creek County, with a 1960 population of 2,793 (Exhibit D,

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[2]Colorado Year Book, 1959-1961, p. 450.

[3]World Almanac, 1964, p. 599.

Part II, p. 3), anticipates having a population of between 20,000 and 30,000 in the next decade.[4]

In Amicus' District 5 and 6 we see another example of the difficulties of attempting to draw district lines without a thorough knowledge of the state.[5] The San Juan Mountains,[6] perhaps the most rugged in the United States outside of Alaska, cut off direct access between Hinsdale and Ouray counties in Amicus' District 5,[7] while they similarly isolate San Juan County from Dolores and San Miguel Counties in Amicus' District 6.[8] It should also be noted that San Miguel and Dolores Counties are in the Dolores River Basin, while the remainder of Amicus' District 6 is in the San Juan River Basin. (Exhibit D, Part II, p. 52) In the water-conscious west, where water is a vital commodity and struggles often occur between residents of different drainage systems, such districting is unreasonable.[9] This plan could well mean that lightly populated

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[4]Master Plan, Clear Creek County (1963), pp. 2, 7, by Clear Creek County Area Redevelopment Administration Committee, issued November 18, 1963, (after the preparation of Exhibit D). This increase is anticipated because of three factors (1) the construction of Interstate Highway 70, west from Denver, opening Clear Creek County for suburban development; (2) establishment by the Public Service Co. of Colorado of the largest hydroelectric plant in Colorado above Georgetown; and (3) opening of a new large molybdenum mine by the Climax Molybdenum Company southwest of Berthoud Pass.

[5]We assume the Government intended to place Dolores County in Amicus' District 6, rather than omit it altogether from any district.

[6]Eleven peaks in this overall range exceed 14,000 feet in elevation. Colorado Year Book, 1959-61, p. 450.

[7]To get from Lake City, in Hinsdale County, to Ouray, in Ouray County, a distance of approximately 20 air miles, it is necessary to travel 138 miles, part of it over unpaved roads.

[8]While Silverton and Telluride, the county seats of San Juan and San Miguel Counties, respectively, are less than 15 air miles apart, they are actually 71 road miles apart via the shortest route, which involves traveling north through Ouray County, in another district. The shortest route through the district is 166 miles.

[9]Under Amicus' second proposal it is entirely possible that no senator would feel impelled to speak up for the residents of the Dolores River Basin, because the rest of the basin, lying in thinly populated western Montrose County, would be overwhelmed by the voters in the rest of Amicus' District 5, which lies in the Gunnison River Basin.

San Miguel and Dolores Counties would be ignored by their senator in the event a conflict ever developed between the two basins.[10]

Amicus' District 7 sprawls over nearly 10,000 square miles of south central Colorado, encompassing the sparsely populated mountain country of Saguache County and the more urban areas of Alamosa County. The contrasts between Saguache, Mineral, Rio Grande and Conejos Counties (District 31 under the Colorado plan) on the one hand, and Alamosa, Costilla and Huerfano Counties (District 30 under the Colorado plan), on the other, are rather striking. For example, over one-half of the acreage in Saguache, Mineral, Rio Grande and Conejos Counties is in national forests, while in the other three counties, only 7.4% of the land is so used. (Exhibit D, Part II, p. 34) These latter three counties are over one-half urban, with a density of 6.3 persons per square mile, while the other four counties are predominantly rural, with a density of 3.9 persons per square mile (Exhibit D, Part II, p. 1). These figures only begin to indicate the vast differences between the sparsely populated, mountainous counties in the west of the district, and the more urban counties situated in the east.

Amicus' District 8 is another example of what can happen when an area is redistricted without a clear understanding of the unique characteristics of its various parts. Las Animas County is a depressed area because of the current decline in coal mining, with an unemployment rate of 9.1% in 1960. It is largely dependent on coal mining, timber and, to a lesser extent, on livestock grazing. (Exhibit D, Part I, pp. 38-39) Baca County, on the other hand, represented the hardest-hit portion of the great "dust bowl" of the 1930's, and has been gradually recovering, to

[10]The bulk of the population in this Amicus District 6 live in the cities of Durango and Cortez, in La Plata and Montezuma counties, in the San Juan Basin.

the point where its unemployment rate was below 4% in 1960. (Exhibit D, Part II, p. 21) The people in Baca and Prowers Counties are more heavily dependent on winter wheat, have some possibilities of oil and have no interest in coal and timber.

While the topographical difficulties are lessened in the Great Plains area, districting still presents some problems. An example is Amicus' District 9, combining Crowley and Otero Counties, which are relatively urbanized and diversified in their economic base, with Bent, Kiowa, Cheyenne and Kit Carson Counties, which are entirely rural and agricultural. As a result, La Junta, a railroad town with a strong labor union population (8,026) would be thrown in with (and submerged by) counties populated by ranchers and farmers. While Crowley and Otero counties had a fairly close balance between employment in manufacturing (15.1%) and in agriculture (16.3%) (Exhibit D, Part I, p. 32), the other counties employ over 30% of their working force in agriculture. (Exhibit D., Part II, p. 12) While Crowley and Otero Counties had a 1960 unemployment rate of 4 to 5%, the other counties in this district had a 1960 rate of around 1%. Again, as in Amicus' District 8, a senator would have a difficult time faithfully representing all the diverse interests of his constituents on welfare legislation, as well as on legislation relating to the competing interests of agriculture and manufacturing.

One of the most anomalous features of the Government's alternative apportionment is the allocation of 11 senators to Denver and of 9 senators to its four suburban counties of Jefferson, Adams, Arapahoe and Boulder. These suburbs are growing faster than any other area of the state (a fact of apparent concern to the Government when discussing the Colorado plan, Br. p. 44), and Denver County is relatively static. The 1960 population of the suburban counties was 435,496 and that of Denver 493,887, a ratio

approximating 9 to 10. The Colorado plan wisely balances these districts, giving consideration to the faster growth of the suburbs, 8 senators to 8, and thus provides for a balanced resolution of their annexation antagonisms. With the Government urging closer adherence to population factors, this overrepresentation of Denver vis-a-vis its suburbs is impossible to explain on any rational basis.